

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Leanne Fornelli	Team: Squad #16	CCRB Case #: 201509459	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 11/02/2015 6:15 PM	Location of Incident: 23rd Precinct stationhouse	Precinct: 23	18 Mo. SOL 5/2/2017	EO SOL 5/2/2017	
Date/Time CV Reported Fri, 11/06/2015 1:32 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 11/06/2015 1:32 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Kimberly Burgos	03248	953709	023 PCT
2. POM Michael Cintron	22065	943089	023 PCT
3. SGT Edwin Jerez	3670	941258	023 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Charles Morales	28876	946026	023 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Kimberly Burgos	Abuse: PO Kimberly Burgos strip-searched § 87(2)(b)	
B.POM Michael Cintron	Abuse: PO Michael Cintron did not process § 87(2)(b)'s complaint regarding an officer.	
§ 87(2)(g), § 87(4-b)		

Case Summary

On November 12, 2015, at 6:15 p.m., § 87(2)(b) arrived at the 23rd Precinct stationhouse in Manhattan after her arrest by PO Michael Cintron § 87(2)(b).

The following was alleged: PO Kimberly Burgos strip-searched § 87(2)(b) (**Allegation A**) and PO Cintron did not process § 87(2)(b)'s complaint regarding an officer (**Allegation B**). § 87(2)(g), § 87(4-b)

There is no video footage of this incident.

Mediation, Civil and Criminal Histories

- § 87(2)(b)'s arrest (Board Review 01) rendered this case ineligible for mediation.
- No notice of claim has been filed in regard to this incident as of January 19, 2016 (Board Review 02).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB case filed by and involving § 87(2)(b) (Board Review 05).
 - PO Burgos has been a member of service for three years and this is the first CCRB complaint filed against her.
 - PO Cintron has been a member of service for nine years and has 11 CCRB allegations pleaded against him in five other cases. § 87(2)(g)
- Three of the CCRB allegations against PO Cintron have been substantiated. In CCRB 201111900, the Board substantiated and recommended command discipline for allegations of a stop and vehicle search, § 87(2)(g), § 87(4-b). The NYPD disposition for the stop was no disciplinary action, the NYPD disposition and penalty for the vehicle search was instructions. § 87(2)(g), § 87(4-b)
- In CCRB 201200276, the Board substantiated and recommended charges for an allegation of physical force, § 87(2)(g), § 87(4-b). The NYPD disposition and penalty for these allegations are pending as of this writing.
- Sgt. Jerez has been a member of service for nine years and has 12 CCRB allegations pled against him in 9 other cases. None of these allegations were substantiated § 87(2)(g)

Additional Witness

- § 87(2)(b)'s significant other, § 87(2)(b) (Board Review 06), was arrested with her and taken to the 23rd Precinct stationhouse. § 87(2)(b) scheduled appointments to be interviewed at the CCRB on December 10, 2015, and December 11, 2015. § 87(2)(b) did not appear for either of these appointments and did not call ahead of time to cancel or reschedule. On January 14, 2016, an online search of the New York City Department of Correction Inmate Lookup Service revealed that § 87(2)(b) was not incarcerated. To date, § 87(2)(b) has not contacted the undersigned investigator.

Findings and Recommendations

Allegation A – Abuse of Authority: PO Kimberly Burgos strip-searched § 87(2)(b)

§ 87(2)(g)

It is undisputed that PO Burgos conducted this search without the authorization of a supervisor.

§ 87(2)(b) (Board Review 07) alleged that PO Burgos instructed her to remove her shirt, shoes and socks, which she did. § 87(2)(b) was not wearing a brassiere, as they cause her irritation. PO Burgos instructed § 87(2)(b) to pull down her pants and underpants, which she did. PO Burgos instructed § 87(2)(b) to bend over, pull her buttocks apart and cough, which she did. § 87(2)(b) felt devastated and humiliated by this.

PO Burgos (Board Review 08) stated that when § 87(2)(b) was at the desk, she made movements that included moving her legs, bending over, crouching down and swinging back and forth. Sgt. Jerez, the desk sergeant, said to PO Burgos, “Make sure you check her good.” Sgt. Jerez offered no further instructions and PO Burgos thought he said this because § 87(2)(b) was moving around so much. PO Burgos interpreted Sgt. Jerez’s instruction to mean that she should ensure that no contraband was being concealed in § 87(2)(b)’s private areas. PO Burgos planned on frisking § 87(2)(b) reaching into all of her pockets and nothing further. PO Burgos had no intention of strip-searching § 87(2)(b).

PO Burgos said that when she escorted § 87(2)(b) to a private bathroom and removed the handcuffs, § 87(2)(b) began pacing, shaking and moving more, causing PO Burgos to fear for her safety. While PO Burgos thought it was possible that § 87(2)(b) had a weapon, she primarily suspected § 87(2)(b) of concealing drugs because § 87(2)(b) seemed intoxicated, as she slurred her words, was somewhat incoherent, irate and very emotional. Furthermore, § 87(2)(b) was arrested in a drug-prone location and § 87(2)(b) told PO Burgos that she was arrested with someone on whom drugs was found.

PO Burgos said that she patted § 87(2)(b) down everywhere on her body on the outside of her clothing. When PO Burgos touched § 87(2)(b)’s waistband, § 87(2)(b) moved her hand there as if to discourage PO Burgos from searching her waistband. When PO Burgos patted § 87(2)(b) down on her legs, § 87(2)(b) tensed up and did not fully open her legs until PO Burgos instructed her to do so. § 87(2)(b) also touched her thighs with her hand, and pressed and rubbed her thighs together, as if she was concealing something in her private areas. § 87(2)(b) asked to use the bathroom and when she learned that PO Burgos had to be present for this, she said, “This is ridiculous,” as if she did not want PO Burgos there.

PO Burgos said that based on § 87(2)(b)’s above-described behavior and that § 87(2)(b) said she was arrested with someone who had drugs on them, PO Burgos decided to do a more thorough search. PO Burgos intended to inform Sgt. Jerez of this after the fact. PO Burgos was afraid to leave § 87(2)(b) alone to obtain permission from Sgt. Jerez first because it was possible that § 87(2)(b) had drugs or something that could harm her. It did not occur to PO Burgos to handcuff § 87(2)(b) and bring her back to the front desk because she was focused on ensuring that § 87(2)(b) had no contraband. PO Burgos had access to Sgt. Jerez via radio, but did not want § 87(2)(b) to hurt her while she was distracted with speaking on the radio.

PO Burgos said that she told § 87(2)(b) to bring her pants and underpants midway down her thighs, which was done. PO Burgos positioned herself behind § 87(2)(b) and had her bend over slightly, so she could see § 87(2)(b)’s anal and vaginal area. PO Burgos confirmed that nothing was hidden in § 87(2)(b)’s private areas. PO Burgos denied having § 87(2)(b) separate her buttocks and cough. PO Burgos never had § 87(2)(b) remove her shirt, which remained on. After this, PO Burgos’s suspicions that § 87(2)(b) was concealing contraband were allayed.

PO Burgos said that she has never conducted a strip-search in her career. PO Burgos defined a strip-search as one in which the individual is made to bend over, cough and the officer

touches the individual's private areas to recover anything tied to or hanging from them. PO Burgos did not define the search of § 87(2)(b) as a strip-search because § 87(2)(b) was only asked to bend over slightly, was not asked to cough and was not touched. PO Burgos stated that she does not search every female in the way that she searched § 87(2)(b) but § 87(2)(b)'s movements created a unique situation.

Although PO Burgos did not conduct a strip-search, she recorded a strip-search of § 87(2)(b) in her memo book because of a conversation she later had with Sgt. Jerez. After searching § 87(2)(b) PO Burgos left the stationhouse to resume patrol. Within an hour, Sgt. Jerez contacted her via telephone and asked her how she conducted the search of § 87(2)(b). PO Burgos stated that she had § 87(2)(b) pull her pants down and bend over slightly. PO Burgos explained that she did this because of how § 87(2)(b) was moving and felt she had to do what she did in the moment for her safety. Sgt. Jerez reprimanded her and informed her that she should have told a supervisor beforehand. Sgt. Jerez told PO Burgos to write in her memo book that she conducted a strip-search and that he authorized it. PO Burgos's memo book (Board Review 09) notes that she strip-searched a female and this was authorized by Sgt. Jerez.

When PO Burgos returned to the stationhouse at the end of the night, she spoke to PO Cintron, § 87(2)(b)'s arresting officer. PO Cintron informed her that § 87(2)(b) complained about the search conducted on her. PO Cintron said, "Hey, listen, my perp is saying that you searched her. Just a heads up." PO Burgos said, "Okay. Whatever that means. I was just doing my job." PO Cintron did not mention that § 87(2)(b) said that she was strip-searched, but said that § 87(2)(b) was mad because she had to pull down her pants.

In his testimony to the CCRB, Sgt. Jerez (Board Review 10) stated that at the desk, § 87(2)(b) was somewhat fidgety, but could not recall how she was moving and could not recall if he suspected her of concealing contraband, as he was more focused on correctly generating the entries for her and § 87(2)(b) in the command log. Sgt. Jerez asked PO Burgos, "Can you bring this female back into the cells?" Sgt. Jerez said that this implied that PO Burgos should search § 87(2)(b) by ensuring she had no contraband or anything sharp on her person. Sgt. Jerez did not expect § 87(2)(b) to be strip-searched, which he defined as any search that exposes the undergarments of the individual. Sgt. Jerez did not issue any instructions to PO Burgos regarding the search and did not tell PO Burgos to search § 87(2)(b) well. About an hour later, PO Cintron approached Sgt. Jerez and said, "[PO Burgos] did a more intrusive search." Sgt. Jerez did not ask PO Cintron what he meant by this or ask how he learned this information. Sgt. Jerez immediately called PO Burgos, who told him that she had § 87(2)(b) expose her undergarments because she suspected her of hiding something in her pants. Sgt. Jerez instructed PO Burgos to note in her memo book that a strip-search was conducted. While PO Jerez could not recall the exact words he used, he intended to instruct her to also note that he verified, not authorized, the strip-search. Sgt. Jerez said that he meant to use the word verify to communicate that a strip-search had been conducted versus authorized, which meant that permission was granted beforehand. Sgt. Jerez viewed the command log entry for § 87(2)(b) (Board Review 11) which notes, "Stripped [sic] search authorized by Sgt. Jerez Performed by PO Burgos neg results." Sgt. Jerez stated that this was his handwriting and that he erroneously used the word authorized when he intended to mean that he verified the strip-search.

PO Cintron (Board Reviews 12 and 13) stated that he was present when § 87(2)(b) was presented at the desk and that she displayed no odd or suspicious behavior. PO Morales (Board Reviews 14 and 15), PO Cintron's partner, corroborated this statement. PO Cintron said that when he later went to speak to § 87(2)(b) in the cell area about her arrest, § 87(2)(b) complained that she was treated unfairly. At first, PO Cintron thought § 87(2)(b) was referring to the arrest until she said that she had been strip-searched. PO Cintron had no knowledge of this beforehand. PO Cintron informed § 87(2)(b) that he would look into this. PO Cintron immediately spoke to Sgt. Jerez and asked him if she knew that § 87(2)(b) had been strip-searched. Sgt. Jerez seemed to have no knowledge of this and stated that he would take care of it.

PO Cintron spoke to PO Burgos a few minutes after he spoke to Sgt. Jerez. PO Cintron asked PO Burgos if she strip-searched § 87(2)(b) and PO Burgos said that she did. PO Cintron asked PO Burgos why. PO Burgos stated that she does that to every prisoner. PO Cintron told PO Burgos that this was incorrect and she needed a reason to do something like that. PO Burgos said, "Well, wasn't she arrested for drugs? That's a good reason enough." PO Cintron said, "No, she wasn't arrested for drugs and even if she was, that's not reason enough. You still need a reason and authorization from a supervisor before doing anything." PO Cintron informed PO Burgos that he had notified a supervisor.

Patrol Guide Procedure 208-05 (Board Review 16) defines a strip-search as any search in which an individual's undergarments or private areas are exposed, or any search in which an individual's clothing is removed, lifted up or pulled down to expose undergarments or private areas. A strip-search may not be conducted routinely in connection with an arrest and may only be conducted when the arresting officer reasonably suspects that weapons, contraband or evidence is being concealed on the person or in their clothing that cannot be discovered by previous search methods. Strip-searches may only be conducted with the knowledge and approval of the arresting officer's immediate supervisor or the borough Court Section supervisor.

§ 87(2)(g) [REDACTED]

Allegation B – Abuse of Authority: PO Michael Cintron did not process § 87(2)(b)'s complaint regarding an officer.

It is undisputed that § 87(2)(b) (Board Review 07) told PO Cintron that she wanted to make a complaint against officers because she was strip-searched and that PO Cintron did not take the complaint.

PO Cintron (Board Reviews 12 and 13) said that when § 87(2)(b) informed him about the strip-search, she stated that she wanted to make a complaint and speak to a sergeant. PO Cintron told her that when she was taken out of the cell to be transported to Central Booking, she would be brought to the front desk area, at which time she could speak to a sergeant. PO Cintron stated that he did not immediately take § 87(2)(b) to speak with Sgt. Jerez because he had to complete the arrest processing for her. PO Cintron could not recall if he informed Sgt. Jerez that § 87(2)(b) wanted to make a complaint before or after she left the stationhouse. PO Cintron stated that when civilians at the stationhouse want to make a complaint against officers, they have the option to fill out a form at the stationhouse. PO Cintron could not provide an answer to why he did not provide § 87(2)(b) with the form to file a complaint, and said that since § 87(2)(b) was under arrest at the time, he thought it may have be easier for her to call after the arrest process was complete. After PO Cintron spoke to Sgt. Jerez, he provided § 87(2)(b) with the phone number to the CCRB. Sgt. Jerez (Board Review 10) said that when PO Cintron informed him that § 87(2)(b) was strip-searched, he did not mention that she wanted to make a complaint.

Patrol Guide Procedure 207-31 (Board Review 17) states that for complaints made in-person at a patrol precinct against a uniformed member of service, an officer must interview the

§ 87(2)(g)

[illegible]

Investigator: _____

	Signature	Print	Date
Squad Leader:	<hr/> Title/Signature	<hr/> Print	<hr/> Date
Reviewer:	<hr/> Title/Signature	<hr/> Print	<hr/> Date